86-540

Supreme Court, U.S.
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No.

In The Supreme Court of The United States

October 1986 Term

GEODECKIE QUILLEN,
Petitioner,

v

SECRETARY OF HEALTH AND HUMAN SERVICES,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE COURT OF APPEALS HAS MISUSED AND MISAPPLIED THE SOCIAL SECURITY VOCATIONAL RULES ("GRIDS") IN SUCH A WAY AS TO DENY PLAINTIFF FULL CONSIDERATION OF STATUTORILY MANDATED REQUIREMENTS (AGE, EDUCATION, WORK EXPERIENCE, AND RESIDUAL FUNCTIONAL CAPACITY), AND IN CONFLICT WITH 42 USCA 423(d)(2)(a) AND THIS COURT'S DECISION IN *HECKLER* V *CAMPBELL*, 103 S. CT 1952 (1983).

2. WHETHER ONE WHO HAS LOST THE TRANSFERABILITY OF HIS SKILLS DUE TO A NON-EXERTIONAL IMPAIRMENT IS TO BE TREATED DIFFERENTLY THAN ONE WHO SIMPLY HAS NO TRANSFERABLE SKILLS.

3. WHETHER THE GRIDS CAN BE APPLIED WHERE NON-EXERTIONAL LIMITATIONS PRECLUDE THE TRANSFERABILITY OF WORK SKILLS.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
GROUNDS FOR JURISDICTION	iv
STATUTES AND REGULATIONS INVOLVED ..	v
STATEMENT OF THE CASE	1
ARGUMENT	2
APPENDIX	

TABLE OF AUTHORITIES

CASES PAGE

FPC v. Texaco, Incs., 373 US 33 (1964) 6

Heckler v Campbell, 103 S Ct 1952 (1983) 2, 6, 8

STATUTES

28 USC §1331 1

42 USC §405(g) 1

42 USC §423(d)(2)(A) v

REGULATIONS

20 CFR §404.1505(a) v

20 CFR §404, Subpart P, Appendix 2, 200.00 through 201.29 ..... vi, 3

RULINGS

SSR 82-41 ..... xvii, 7

GROUNDS FOR JURISDICTION

1. Petitioner, GEODECKIE QUILLEN, petitions for review of the unpublished decision of the Sixth Circuit Court of Appeals, dated May 29, 1986.

2. Rehearing has been denied by Order of July 9, 1986.

3. Jurisdiction for review by this Court is conferred by 28 USC§1254(1).

STATUTES AND REGULATIONS INVOLVED

1. 42 USCA §423(d)(2)(A):

"An individual. . . shall be determined to be under a disability only if his physical or mental impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, whether a specific job vacancy exists for him or whether he will be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country."

2. 20 CFR §404.1505 (a):

"The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience. We will use this definition of disability if you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22."

3. 20 CFR Pt. 404, subpart P, Appendix 2, 200.00 through 201.29:

200.00 Introduction.

"(a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is

reflected in the ''Decisions'' shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the ''Dictionary of Occupational Titles'' and the ''Occupational Outlook Handbook,'' published by the Department of Labor; the ''County Business Patterns'' and ''Census Surveys'' published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules

represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on a individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rules(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S).

(a) Most sedentary occupations fall within the skilled, semi-skilled professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary

work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a findng of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level

attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approacing advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term ''younger individual'' is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals: (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to

perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate the substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

Table No. 1

Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous Work Experience	Decision
201.01	Advanced Age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled — skills not transferable.[1]	Do.
201.03	do	do	Skilled or semiskilled — skills transferable.[1]	Not disabled.
201.04	do	High school graduate or more — does not provide for direct entry into skilled work.[2]	Unskilled or none	Disabled.
201.05	do	High school graduate or more — provides for direct entry into skilled work.[2]	do	Not disabled.
201.06	do	High school graduate or more — does not provide for direct entry into skilled work.[2]	Skilled or semiskilled — skills not transferable.[1]	Disabled.
201.07	do	do	Skilled or semiskilled — skills transferable.[1]	Not disabled.
201.08	do	High school graduate or more — provides for direct entry into skilled work.[2]	Skilled or semiskilled — skills not transferable.[1]	Do.

Rule	Age	Education	Previous Work Experience	Decision
201.09	Closely approaching advanced age.	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled — skills not transferable.	Do.
201.11	do	do	Skilled or semiskilled — skills transferable.	Not disabled.
201.12	do	High school graduate or more — does not provide for direct entry into skilled work.[3]	Unskilled or none	Disabled.
201.13	do	High school graduate or more — provides for direct entry into skilled work.[3]	do	Not disabled.
201.14	do	High school graduate or more — does not provide for direct entry into skilled work.[3]	Skilled or semiskilled — skills not transferable.	Disabled.
201.15	do	do	Skilled or semiskilled — skills transferable.	Not disabled.
201.16	do	High school graduate or more — provides for direct entry into skilled work.[3]	Skilled or semiskilled — skills not transferable.	Do.

Rule	Age	Education	Previous Work Experience	Decision
201.17	Younger individual age 45–49.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	do	Limited or Less — at least literate and able to communicate in English.	do	Not disabled.
201.19	do	Limited or less	Skilled or semiskilled — skills not transferable.	Do.
201.20	do	do	Skilled or semiskilled — skills transferable.	Do.
201.21	do	High school graduate or more . . .	Skilled or semiskilled — skills not transferable.	Do.
201.22	do	do	Skilled or semiskilled — skills transferable.	Do.

Rule	Age	Education	Previous Work Experience	Decision
201.23	Younger individual age 18–44.	Illiterate or unable to communicate in English.	Unskilled or none	Do.[4]
201.24	do	Limited or less — at least literate and able to communicate in English.	do	Do.[4]
201.25	do	Limited or less	Skilled or semiskilled — skills not transferable.[1]	Do.[4]
201.26	do	do	Skilled or semiskilled — skills transferable.	Do.[4]
201.27	do	High school graduate or more.	Unskilled or none	Do.[4]
201.28	do	do	Skilled or semiskilled — skills not transferable.	Do.[4]
201.29	do	do	Skilled or semiskilled — skills transferable.	Do.[4]

1. See 201.00(f).
2. See 201.00(d).
3. See 201.00(g).
4. See 201.00(h).

4. SSR 82-41 (Policy Statement 4.b)

"All functional limitations included in the RFC (exertional and nonexertional) must be considered in determining transferability. For example, exertional limitations may prevent a claimant from operating the machinery or using the tools associated with the primary work activities of his or her PRW. Similarly, environmental, manipulative, postural, or mental limitations may prevent a claimant from performing semi-skilled or skilled work activities essential to a job. Examples are watchmakers with hand tremors, house painters with severe allergic reactions to pain (sic) fumes, craftsmen who have lost eye-hand coordination, construction machine operators whose back impairments will not permit jolting, and business executives who suffer brain damage which notably lowers their IQ's. These factors as well as the general capacity to perform a broad category of work (e.g., sedentary, light or medium) must be considered in assessing whether or not a claimant has transferable work skills. If an impairment(s) does not permit acquired skills to be used, the issue of transferability of skills can be easily resolved." See p. 2199-46 CCH Unemployment Ins. Rptr., Para. 14, 168.

STATEMENT OF THE CASE

A. Procedural History

Petitioner, GEODECKIE QUILLEN, applied for Social Security Disability Insurance Benefits on August 6, 1982. This claim was denied both initially and upon reconsideration. A request for Hearing was filed and after the Hearing, Petitioner's claim was denied by the Administrative Law Judge (ALJ) on September 27, 1983. The ALJ cited Vocational Rule ("grid") 201.11 in support of his findings. A Request for Review was denied by the Appeals Council on January 26. 1984.

Pursuant to 28 USC § 1331 and 42 USC § 405(g), Petitioner appealed to the United States District Court for the Eastern District of Michigan. The matter was referred to Magistrate Marcia G. Cooke who on December 31, 1984, recommended denial of Petitioner's Motion for Summary Judgment. As it pertains to this appeal, the Magistrate agreed that the ALJ's reliance on grid 201.11 was misplaced since a pulmonary impairment meant Petitioner's skills could not transfer to an industrial setting. She found, however, that Quillen could do sedentary unskilled jobs and ruled the grids wholly inapplicable. Petitioner objected citing the complete applicability of grid 201.10. The District Court found Petitioner's objections unpersuasive and by Judgment of April 9, 1985 (amended June 13, 1985) denied Petitioner's Motion for Summary Judgment and dismissed the complaint.

Petitioner appealed to the United States Court of Appeals for the Sixth Circuit citing his eligibility under grid 201.10. The Court stated the facts of the case in a manner wholly acceptable to Petitioner for purposes of this appeal. Nonetheless, the Court ruled that the grids do not apply and affirmed the Court below. Rehearing was denied on July 9, 1986.

B. FACTS OF THE CASE (Pages correspond to the Opinion of the Sixth Circuit filed May 29, 1986.)

GEODECKIE QUILLEN was born in 1932 and has a limited education. (P.1) His past work was semi-skilled and medium to heavy exertionally. (P.1) There is no disagreement that he suffers from physical impairments which preclude him from returning to his former line of work. (P.2) There is no dispute that he can perform sedentary work. (P.3) Petitioner has a non-exertional limitation which does not allow for the transferability of his work skills to sedentary work. (P.4)

The Court of Appeals in affirming the District Court thus found that Petitioner could perform sedentary unskilled work and was disqualified. For purposes of this appeal, it is agreed that all of the above (except Plaintiff's disqualification for benefits) is true and accurate including the physical ability to do sedentary unskilled work.

Petitioner's argument as set forth below will show that the Court of Appeals has misunderstood the grids and thus failed to properly apply the age factor in violation of the Statutes and Regulations involved as set forth above.

ARGUMENT

Petitioner submits that the Court of Appeals erred in its decision of May 29, 1986. With the highest respect to that Court it is counsel's reasoned belief that the decision of the Court with reference to the use as the Vocational Rules (''grids'') constitutes a grotesque misapprehension of the purpose and philosophy behind the grids and works to circumvent this Court's clear pronouncements on the grids stated in *Heckler* v *Campbell*, 103 S Ct 1952 (1983).

Basically, the Court below has ruled that Mr. Quillen has impairments precluding a return to his former work (p.2). The Court then went on to find, after lengthy analysis that substantial evidence shows that Petitioner had the capacity to perform a limited range of sedentary work (pp. 2-4).

For purposes of this petition it is necessary at this point to restate the operative facts which are not disputed herein:

1. Petitioner was 52 years old at the time of the hearing. This is defined by Social Security Regulations as "closely approaching advanced age." 20 C.F.R., Part 404, Subpart P, Appendix 2, Rule 201.00(g).

2. Petitioner attended sixth grade. This is a "limited" educational background under the "grid" framework.

3. Petitioner's past work history was semi-skilled.

4. Petitioner has impairments which limit his maximum sustained work capability to sedentary work.

The ALJ took the position that Mr. Quillen had transferable skills. He, therefore, applied Vocational Rule 201.11 and found Petitioner not disabled. This Rule holds that one who has:

1. Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairments;

2. Is closely approaching advanced age;

3. Is of limited or less education;

4. Has previous work experience of a skilled or semi-skilled background; and

5. Whose skills are transferable;

is deemed to be not disabled.

Petitioner argued that he had a non-exertional impairment which precluded the use of the skills. He contended that this, therefore, brought him precisely within the ambit of grid 201.10. This rule with the same first four factors as the grid above, states that if a claimant's skills are non-transferable he is deemed to be disabled.

The Magistrate, as adopted by the District Court and the Court of Appeals, ruled that because he had a non-exertional impairment which precluded use of his otherwise transferable skill the grid could not be used. Petitioner submits that this is illogical and clearly blatantly erroneous. In the context of Social Security Law it is the full equivalent of throwing out the baby with the bath water.

What the Court below has done is distinguish between:

a. Skills non-transferable,

b. Skills not usable because of a non-exertional limitation.

There is absolutely no rational or reasonable means of making such a distinction. In situation "a" the claimant's work skills cannot be used in sedentary work because there is no sedentary work that can make use of the skills. In situation "b" the claimant's (Quillen) work skills cannot be used because a non-exertional limitation (here his pulmonary condition) does not allow for the transferability of the skills (exactly what the Court has found.) In neither case, can the claimant transfer his skills. He is thus precisely within the ambit of the grid. The grid is tailored to him.

Social Security recognizes this fact in Rule 201.00(g) which states:

"Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if

> they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work, and have no transferable skills, a finding of disability ordinarily obtains. . .''

In essence, if the only work a claimant of Petitioner's age, educational background, and previous work experience can do is unskilled sedentary work, he is disabled. This is the entire philosophy of the grids and it makes no difference why the skills are non-transferable.

Merely because one of the factors to be considered is non-exertional in nature, does not mean it is necessary to discard the grid. In essence the dispute between Petitioner and the Secretary on this issue in the courts below involved transferability of skills. If Petitioner's skills are transferable Rule 201.10 applies and he is disabled. If all any 50–54 year old with a limited education can do is sedentary unskilled work, he is disabled as that term is applied in the law.

The law requires a consideration of a claimant's age, educational background and work history as well as his impairments in determining whether he is disabled. This is the philosophy behind the grids and it is this philosophy that the Court below has missed. The Court below incorrectly ruled that the grid is only applicable where *exertional* impairments preclude skill transferability (p. 4, citing 200.00(e)(1)). The cited Rule, however, precludes grid application ''where the individual has *solely* a non-exertional type of impairment.'' (e.g. psychiatric)

Here Petitioner's impairments are exertional to the extent that he can only do sedentary work and he is non-exertionally limited to unskilled work, but it can not be said that his impairments are *solely* non-exertional.

Petitioner submits again that what the Court has done is distinguish between a claimant whose work had skills that do not transfer and apply the grids and one like Petitioner whose skills are not transferable because of an impairment and not apply the grids. The net result is the same, i.e., the skills are non-transferable. Such a distinction is more than between form and substance, it is rather like Holland and the Netherlands.

What the Court of Appeals did was rule that Petitioner could do sedentary unskilled work. This omits a consideration of the age factor which is mandated by statute and built into the grids. Looking at all ages under grids 201.01 et seq. and using the same educational, vocational, and functional factors as Petitioner has, one can see how this works. If a claimant has the residual functional capacity for sedentary work, limited education, and semi-skilled work history with non-transferable skills the grids operate as follows:

If claimant is 18–44 he is not disabled under 201.25.

If claimant is 45–49 he is not disabled under 201.19.

If claimant is 50–54 he is disabled under 201.10.

If claimant is 55 and over he is disabled under 201.02.

Thus, if any claimant over 50 can do only sedentary unskilled work, he is considered disabled.

This Court has ruled that the Secretary may rely on the grids to determine a claimant's right to benefits, *Heckler* v *Campbell*, 103 S. Ct. 1952 (1983). The Secretary may rely on his rule-making authority to determine issues that do not require a case-by-case consideration. *FPC* v *Texaco, Incs.*, 373 US 33, 41-4 (1964). The Sixth Circuit seeks to circumvent this by inventing an exception where skills are non-transferable due to a nonexertional impairment. No such exception is contemplated by the *Campbell* decision. Indeed the Secretary has

published a ruling in line with Petitioner's position in this case.

Social Security Ruling 82-41 states precisely what Petitioner contends is the law:

> "If an impairment(s) does not permit acquired skills to be used, the issue of transferability of skills can be easily resolved." SSR 82-41 at 6.

An illustration is given of a jeweler who loses use of his hand. While jewelry making is a skill it is not transferable since he no longer has the use of both hands.

Thus Petitioner's position is wholly in accord with the Secretary's own rulings on this matter. In point of fact, the Secretary's opposition to Petitioner in the Courts below was based on there being transferability as found by the ALJ but not by the Magistrate or the Court of Appeals. Plaintiff thus challenges the Secretary to adhere to his stated position in SSR 82-41 and admit that the Sixth Circuit's decision is clearly erroneous and based on the factual findings that the Court determined were supported by substantial evidence Quillen should be awarded benefits.

To give one final illustration to the Court, one need contrast two men — one fictional John Doe, the second the real Geodeckie Quillen.

Both were born July 15, 1932.

Both had a sixth grade education.

Both are limited to sedentary work by a severe impairment.

Mr. Doe worked as a widget maker. This is medium to heavy semi-skilled work but the skills obtained do not transfer to sedentary work. In other words there is no sedentary work Mr. Doe can do that makes use of his skills. All he can do is sedentary unskilled work. He has no advantage over other

workers and thus considering his age and educational background, Grid 201.10 dictates a finding of disabled.

Mr. Quillen worked as a plater repairman for Firestone Steel Products. This is medium to heavy semi-skilled work. His non-exertional pulmonary condition does not allow for the transferability of his work skills. In other words he cannot perform the sedentary work in which he could use his skills. All he can do is sedentary unskilled work. He has lost his advantage over other workers and thus considering his age and education background, Grid 201.10 also dictates a finding of disabled.

This is no difference whatsoever between these men under the law.

WHEREFORE, Petitioner prays that the Court grant certiorari and reverse the decision of the Sixth Circuit and either order the Secretary to award benefits or remand for proper consideration of the grids under *Heckler* v *Campbell*.

Respectively submitted,
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APPENDIX

TABLE OF CONTENTS

	PAGE
ORDER OF COURT OF APPEALS May 29, 1986 . .	A-1
ORDER OF COURT OF APPEALS July 9, 1986 . .	B-1
MAGISTRATE'S REPORT AND RECOMMENDATION	C-1
JUDGMENT AND ORDER OF DISTRICT COURT	D-1
AMENDED ORDER AND JUDGMENT	E-1
ACTION OF APPEALS COUNCIL	F-1
DECISION OF ADMINISTRATIVE LAW JUDGE	G-1

**NOT RECOMMENDED FOR PUBLICATION,
LOCAL RULE 24**

No. 85-1445

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GEODECKI QUILLEN,
Plaintiff-Appellant,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Decided and Filed _____

Before: **Contie** and **Ryan**, Circuit Judges; and **Brown**, Senior Circuit Judge.

Per Curiam. Plaintiff-Appellant Geodecki Quillen (plaintiff) appeals from a judgment entered by the district court affirming the decision of the Secretary of Health and Human Services (Secretary) denying plaintiff social security disability benefits. On appeal, plaintiff principally claims the decision of the Secretary was not supported by substantial evidence. For the reasons set forth below, we affirm the judgment of the district court.

Plaintiff was born in 1932 and has a limited education. Plaintiff last worked as a plater repairman for Firestone Steel Products on April 26, 1982. This job was classified as semi-skilled and required medium to heavy lifting, stooping and bending.

Plaintiff filed an application for social security disability benefits on August 6, 1982, claiming disability due to back and knee problems. This application was denied initially and upon reconsideration. Plaintiff received review of his application before an administrative law judge (ALJ), who in a decision dated September 27, 1983, denied plaintiff's request for benefits. The ALJ found that plaintiff had demonstrated medical impairments, severe post-laminectomy syndrome and chronic obstructive lung disease, but had retained the residual functional capacity to perform a full range of sedentary work. Thereafter, the Appeals Council on January 26, 1984, denied plaintiff's request for review.

Plaintiff filed the instant action in district ccourt on March 6, 1984, seeking review of the final decision of the Secretary. The district court appointed a magistrate to consider this claim and to file a report and recommendation. The magistrate recommended that the decision of the Secretary be affirmed and this recommendation was adopted by the district court on April 9, 1985.[1] Thereafter, plaintiff filed an appeal with this court on May 30, 1985.

There is no disagreement in the instant case that plaintiff suffers from physical impairments which preclude him from returning to his former line of work. The evidence presented by plaintiff and noted by the ALJ in his report indicates that plaintiff suffers from post-laminectomy syndrome and chronic obstructive lung disease. The issue is whether plaintiff's medical conditions rise to the level of "disability" within the meaning of the regulations such that plaintiff cannot "engage

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[1] An amended order and judgment, again adopting the magistrate's report, was subsequently filed on June 13, 1985 recognizing plaintiff's objections to the magistrate's report. The April 9th order had erroneously stated that neither party had objected to the magistrate's report and recommendation.

in any other kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d)(2)(a) (1982).

The ALJ found that plaintiff had residual functional capacity to perform a full range of sedentary work. Similarly, the magistrate found that plaintiff was capable of unskilled work in a clean environment. Citing the testimony of the vocational expert, the magistrate stated that "given plaintiff's ability to do only sedentary work, there are 6,000 to 8,000 unskilled sedentary jobs which could be performed despite [plaintiff's] pulmonary deficiency and lower back pain." Report and Recommendation of the Magistrate at 6.

Plaintiff disagrees with the magistrate's conclusion that there are 6,000 to 8,000 jobs in the Detroit area that he is able to perform. Plaintiff claims that this conclusion, which was based on the testimony of the vocational expert, does not take into account the fact that plaintiff suffers from a severe limitation of forward flexion. Moreover, plaintiff claims, according to the testimony of the vocational expert, the 6,000 to 8,000 jobs require a forward flexion of at least forty-five degrees, a range of motion which the plaintiff lacks.

Plaintiff's contention is based on the following testimony by the vocational expert:

> ALJ: [H]e indicated that the forward [flexion] of the individual was only to fifteen degrees as compared to what ninety would be full forward [flexion]. Would that in any way affect sedentary work?
>
> Expert: [I]t would be my general observation that people . . . do sedentary work either at a machine or either at a bench. Assuming a totally upright position to be ninety degrees if my geometry is right today. I would say the [sic] most people work at a position that approximates forty-five degrees, that is they don't bend all the way over to ninety but you do tilt forward to a bench, to a

> machine, to a table, and it would seem to me again it would seem that you would have half of the normal full range of forward [flexion].
>
> ALJ: Are you telling me that anyone that [sic] doesn't have a forty-five degree [flexion] can't do anything?
>
> Expert: If I'm understanding as I say the geometry [is] correct, it would seem very difficult.

Joint Appendix at 94. Certainly, this testimony, although somewhat vague, supports plaintiff's position that the number of unskilled, sedentary jobs the magistrate found plaintiff capable of performing was far more limited in number than indicated by the magistrate in his report. However, the vocational expert also indicated that one who could sit, eat, read and write at a table was capable of performing sedentary work. There is no dispute that plaintiff can perform these tasks. Moreover, contrary to plaintiff's claims of severe motion limitation, there is evidence in the record from Dr. Newman, plaintiff's last treating physician, indicating that plaintiff has a forward flexion of forty-five degrees which would permit him to perform a full range of sedentary work.

Plaintiff next claims that the magistrate failed to address why plaintiff's case did not fit within Rule 210.10 of 20 C.F.R., Part 404, Subpart P, App. 2 (1985) (the grid). Plaintiff maintains that his advanced age, limited education and non-transferable job skills direct a finding under Rule 201.10 of disabled.[2]

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[2] Rule 210.10 directs a finding of disabled where the claimant is closely approaching advanced age, has less than a high school education and has skills which are not transferable. A thorough discussion of the mechanics of the grid is contained in *Kirk v. Secretary of Health and Human Services*, 667 F.2d 524 (6th Cir. 1981), *cert. denied*, 461 U.S. 957 (1983).

Plaintiff's reliance on Rule 201.10 is misplaced. The grid is only directly applicable where *exertional* impairments or limitations preclude the transferability of work skills. 20 C.F.R., Part 404, Subpart P, App. 2, Section 200.00(e)(1). In the instant case, plaintiff has an exertional and a nonexertional limitation. The nonexertional limitation, plaintiff's pulmonary condition, does not allow for the transferability of his work skills. Therefore, as recognized by the magistrate, it is inappropriate to utilize the grid in any manner other than as a guide. 20 C.F.R., Part 404, Subpart P, App. 2, Section 200.00(d).

Accordingly, the judgment of the district court is **affirmed**.

No. 85-1445

United States Court of Appeals
for the Sixth Circuit

GEODECKIE QUILLEN,
Plaintiff-Appellant,

ORDER

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,
Defendant-Appellee

BEFORE: CONTIE and RYAN, Circuit Judges, and BROWN, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN

John P. Hehman, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEODECKI QUILLEN,
Plaintiff,

vs.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant.

Civil No. 84-CV-1397-DT

Hon. Robert E. DeMascio

MAGISTRATE'S REPORT AND RECOMMENDATION

This is an action timely filed under §205(g) of the Social Security Act, as amended, 42 U.S.C. §405(g), to review a final decision of the Secretary of Health and Human Services denying plaintiff's application for disability benefits. Motions for Summary Judgment have been submitted by both parties.

Geodeckie Quillen, born on July 15, 1932, has a marginal (fifth grade) education and work experience as a job setter for 17 years, a semi-skilled and heavy job, and as a plater repairman for 3 years, a semi-skilled and medium job (Tr. 113, 86). He filed for disability insurance benefits on August 6, 1982, alleging disabling back problems. After exhausting administrative remedies, he filed the complaint on March 26, 1984.

At his *de novo* hearing plaintiff testified that he retired early because there were no light jobs available where he worked (Tr. 48). He was and is restricted to light activity due to constant lower back pain radiating into the right leg. He also has breathing problems, including shortness of breath when walking (Tr. 58, 68, 70). He sits 30 to 40 minutes before he must stretch and only drives about 5 miles a week (Tr. 62–64). He can walk

2 blocks but can do no climbing (Tr. 70). He had disc surgery in 1972 and has been undergoing treatment since that time (Tr. 66-67). He does some gardening and tries to do yard-work when his children are not available (Tr. 74). During the hearing he adjusted his position and leaned to one side to ease the pain (Tr. 78). Plaintiff's medications include theovent, tolectin, fiornal #3, flexoril and ascripton. He also wears a back brace (Tr. 174).

In support of his claim, plaintiff submitted medical records beginning with hospitalization in 1980 for back pains. X-rays were essentially normal, however, and plaintiff responded favorably with conservative treatment. He was discharged with a diagnosis of degenerative disc disease (Tr. 138-41). In August, 1981, he reentered the hospital with back and right knee pain. X-rays of the spine showed asymmetry in the lumbar spine but no arthritis and only slight sacral base unleveling. X-rays of the right knee were essentially normal. He improved substantially with conservative treatment and was discharged with a diagnosis of chronic lumbar myositis and myofibrositis (Tr. 142-51). In November, 1981, plaintiff was examined by Dr. Ziegler, a neurologist, who reported complaints of constant pain in the lumbosacral area into the legs. Plaintiff walked with a limp. Range of motion of the lumbar-spine was decreased, but there were no ankle spasms. He sat on the examination table with legs forward. Although there was no motion weakness in the extremities, there was decreased sensory perception over dermatones on the left, which has been present since 1971. Dr. Ziegler's clinical impression was chronic nerve root irritation (Tr. 152-54).

In December, 1981, plaintiff reentered the hospital with low back and left leg pain. X-rays of the lumbar spine revealed minimal spondylosis and curvature of the spine to the left. An EMG showed a minimal extradural defect. Plaintiff responded favorably to conservative treatment and was released with a

discharge diagnosis of lumbar myositis, myofibrositis, and post-laminectomy syndrome (Tr. 132-37, 155-60). The Secretary's consultative examiner reported in September, 1982, that plaintiff walks with a limp, has curvature of the spine but no muscle spasm, decreased range of motion in the lumbar spine, difficulty tip-toeing and squatting, positive straight leg raising at 30^0 right and 60^0 left, and some sensory deficits in the right leg with normal range of motion. Plaintiff could get onto the examination table and lie on his back with no trouble. X-rays of the right knee showed slight narrowing with no evidence of arthritis. X-rays of the lumbar spine were fairly normal with normal disc spaces and no degenerative spotting. The examiner concluded that plaintiff has gross limitations of back motions but no neurological involvement to suggest nerve root involvement (Tr. 161-65).

In November, 1982, plaintiff's treating physician indicated in a somewhat cryptic report that plaintiff has hypothesia in the right calf and pain on straight leg raising although these symptoms come and go (tr. 168-69). In May, 1983, plaintiff's other treating physician indicated he has been treating plaintiff since 1980 primarily for a respiratory problem. Chest x-rays were normal but pulmonary function testing was moderately abnormal. Since 1980 his coughing and shortness of breath have exacerbated a couple of times. A pulmonary function test in January, 1983, was unofficially interpreted as indicating severe restrictive lung disease although the doctor's report clinically interpreted plaintiff's disease as moderate (Tr. 175-77). In June, 1983, Dr. Athens indicated that plaintiff's pulmonary condition is stable because he is restricted to clean environments (Tr. 34). In July, 1983, plaintiff underwent another consultative examination, which revealed diminished breath sounds, decreased range of motion in the dorsolumbar spine, tenderness, pain on straight leg raising, decreased range of motion in the knees, some ankle spasms, a

limp, and difficulty changing positions from standing to stitting. An EMG showed increased resistance and polyphasic activity; nerve conduction studies showed delays. Neither was accompanied by a report interpreting these findings, however. Dr. Newman interpreted these tests as demonstrative of changes consistent with sciatic nerve root irritation. No x-rays were performed (Tr. 178-80).

The Administrative Law Judge (ALJ) found that plaintiff has severe post-laminectomy syndrome and chronic obstructive lung disease and cannot return to his past relevant work. The ALJ further concluded, however, that the clinical findings and subjective testimony do no substantiate severe pain which precludes all significant gainful activity. To the contrary, he is able to do a full range of sedentary work. Therefore, pursuant to 20 C.F.R. Subpart P, Appendix 2, rule 201.11, he is not disabled; and benefits were denied.

The vocational expert testified that plaintiff's transferable skills include knowledge of mechanics, conveyor lines, and plating lines and the ability to use a fairly wide range of hand tools (Tr. 86). Assuming someone of plaintiff's age, experience, and background who can do light work in a clean environment, there are unskilled jobs, such as night watchman, light landscaping, and usual inspector for that person to perform. Limiting that person to only sedentary work, he can still do unskilled forms of inspection, packaging, and light bench work (Tr. 86-87, 89-90). Plaintiff's skills would not transfer to sedentary jobs because no jobs involving those skills exists in a clean environment (Tr. 86-87). However, there would be little, if any, vocational adjustment for plaintiff to any of the aforementioned jobs (Tr. 88-89).

The Magistrate finds that the ALJ's reliance on the medical-vocational guidelines to reach the conclusion that plaintiff is not disabled was misplaced in this case. The grid in

Appendix 2 to C.F.R. Subpart P was upheld against constitutional attack in *Kirk v. Secretary of Health and Human Services*, 667 F.2d 524 (6th Cir. 1981). However, the grid comes into play only when the claimant's characteristics *precisely* coincide with the grid. In any other situation, the grid is used at most for guidance. *Id.* at 535. In the case at bar, reliance on the grid was inappropriate because plaintiff's characteristics do not *precisely* coincide. The ALJ relied on rule 201.11, which includes a finding that the claimant has acquired skills transferable to other employment. The vocational expert testified, however, that plaintiff's skills would *not* transfer to any semi-skilled, sedentary or light jobs because of the industrial setting in which they are located. Plaintiff's pulmonary problems preclude work in a non-clean, industrial setting. The ALJ found that the medical evidence shows that plaintiff's pulmonary dysfunction limits him to sedentary work. Reading the ALJ's findings and the vocational expert's testimony in conjunction defeats the use of the grid in this case.

Since the grid does not apply here, the vocational expert's testimony is pivotal. He testified that given plaintiff's ability to do only sedentary work, there are 6,000 to 8,000 unskilled sedentary jobs which could be performed despite his pulmonary deficiency and lower back pain. Vocational adjustment to these entry-level jobs would be minimal. I believe this is substantial evidence that plaintiff can do sedentary work despite his impairments.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEODECKIE QUILLEN,
Plaintiff

vs.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant.

Civil
No. 84-CV-1397-DT
Hon. Robert E. Demascio

ORDER ACCEPTING MAGISTRATE'S REPORT AND RECOMMENDATION

Plaintiff filed this complaint seeking review of the Secretary of Health and Human Services' decision denying his application for disability benefits. The plaintiff then filed a Motion for Summary Judgment, which the court referred to a Magistrate for a Report and Recommendation. The court has reviewed the administrative record, supporting brief and the Magistrate's Report and Recommendation, to which neither party has objected and time for filing objections has expired. The Magistrate found that the Secretary's decision is supported by substantial evidence. We agree with the Magistrate's findings and conclusions.

ACCORDINGLY, IT IS ORDERED that the Magistrate's Report and Recommendation is hereby adopted and a Judgment shall enter accordingly.

/s/ ROBERT E. DEMASCIO
UNITED STATES DISTRICT JUDGE

Dated: April 09, 1985

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEODECKIE QUILLEN,
Plaintiff

vs.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant.

Civil Action
No. 84-1397
Honorable Robert E. DeMascio

AMENDED ORDER & JUDGMENT

Plaintiff filed this complaint seeking review of the Secretary of Health and Human Services' decision denying his application for disability benefits. The plaintiff then filed a motion for summary judgment, which the court referred to a magistrate for a report and recommendation. The court has reviewed the administrative record, supporting brief and the magistrate's report and recommendation, together with plaintiff's objections thereto. The Magistrate found that the Secretary's decision is supported by substantial evidence. Plaintiff has not raised any meritorious argument in his objections. We agree with the Magistrate's findings and conclusions.

NOW, THEREFORE, IT IS ORDERED that the Magistrate's Report and Recommendation is hereby adopted;

IT IS FURTHER ORDERED that the plaintiff's motion for summary judgment be and the same hereby is DENIED and this cause of action DISMISSED.

/s/ ROBERT E. DEMASCIO

Robert E. DeMascio
United States District Judge

Dated: June 13, 1985

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to:
SGC
47-38-8373

Social Security Administration

Office of Hearings and Appeals
PO Box 3200
Arlington VA 22203

Janury 26, 1984

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mr. Geodecki E. Quillen
a/k/a Ellis G. Quillen
254 Washington
Trenton, MI 48183

Dear Mr. Quillen:

The request for review of the Administrative Law Judge's decision in your case has been considered.

Social Security Administration regulations provide that the Appeals Council will grant a request where: (1) there appears to be an abuse of discretion by the Administrative Law Judge; (2) there is an error of law; (3) the Administrative Law Judge's action, findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue which may affect the general public interest. (These provisions are contained in 20 CFR 404.970 for Social Security claims under Title II of the Social Security Act and in 20 CFR

416.1470 for supplemental security income claims under Title XVI of the Act.)

The Appeals Council has concluded that there is no basis under the above regulations for granting your request for review. Accordingly, your request is denied and the Administrative Law Judge's decision stands as the final decision of the Secretary in your case. In reaching this conclusion, the Appeals Council carefully considered each of the contentions raised by your representative in her brief dated November 29, 1983, but decided that these contentions do not provide a basis for changing the Administrative Law Judge's decision.

If you desire a court review of the Administrative Law Judge's decision, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from the date of receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing to the contrary is made. See section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)) for claims under Title II; section 1631(c)(3) of the Act (42 U.S.C. 1383(c)(3)) for claims under Title XVI; and 20 CFR 422.210.

If a civil action is commenced, your complaint should name the Secretary of Health and Human Services as the defendant and should include the Social Security number(s) shown at the top of this notice.

Sincerely yours,

/s/ PAUL J. FITZPATRICK

Paul J. Fitzpatrick
Member, Appeals Council

cc:
Judith A. Fleming, Esq.
Detroit, MI 48226

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to:

Social Security Administration
Office of Hearings and Appeals

Name and Address of Claimant:

Geodeckie E. Quillen
254 Washington
Trenton, Michigan 48183

NOTICE OF DECISION — DENIAL
PLEASE READ CAREFULLY

If you disagree, in whole or in part, with the enclosed decision you have the right to request the Appeals Council to review it within 60 days after the date of receipt of this notice. It will be presumed you received this notice within 5 days after the date shown below, unless you show us that you did not receive it within the 5-day period.

If you wish to request review, you (or your representative) should file the request at your local Social Security office. The people there will supply you with a request for review form and will be glad to assist you in completing the form. However, if you prefer, you may file your request for review at the hearing office or by sending a letter, requesting review, directly to the Appeals Council, Office of Hearings and Appeals, P.O. Box 2518, Washington, D.C. 20013.

Unless you file a timely request for review by the Appeals Council, you may not obtain a court review of your case under section 205(g), 1631(c)(3), or 1869(b) of the Social Security Act as amended.

This notice and enclosed copy of hearing decision mailed
September 27, 1983

cc:
Name and Address of Representative:
Judith A. Fleming, Esq.
1632 First National Bldg.
Detroit, Michigan 48226

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
OFFICE OF HEARINGS AND APPEALS

DECISION

IN THE CASE OF:
Geodeckie E. Quillen
(Claimant)

CLAIM FOR:
Period of Disability and
Disability Insurance Benefits

407-38-8373
(Social Security Number)

This case is before me on a request for hearing. I have carefully considered all the documents identified in the record as exhibits, the testimony at the hearing and arguments presented.

ISSUES

The general issues are whether the claimant is entitled to a period of disability and disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act, as amended. The Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairment(s) which can be expected to either result in death or last for a continuous period of not less than 12 months.

The specific issues are whether the claimant was under a "disability" and, if so, when such disability commenced and the duration thereof; and whether the disability insured status requirements of the Act are met for the purpose of entitlement.

APPLICABLE REGULATIONS AND EVALUATION OF THE EVIDENCE

Pursuant to the Act, the Secretary has established Social Security Administration Regulations No. 4. The regulations provide steps for evaluating disability (20 CFR 404.1520(a)). In addition, a claimant's impairment must meet the 12 month duration requirement before being found disabling. A set order is followed to determine whether an individual is disabled. *If it is determined that a claimant is or is not disabled at any point in the review, further review is not necessary.*

Social Security Administration Regulations No. 4 requires that I consider the following in sequence:

1. An individual who is working and engaging in substantial gainful activity will not be found to be "disabled" regardless of medical findings (20 CFR 404.1520(b));

2. An individual who does not have a "severe impairment" will not be found to be "disabled" (20 CFR 404.1520(e));

3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and which "meets or equals a listed impairment in Appendix 1 of Subpart P of Regulations No. 4, a finding of "disabled" will be made without consideration of vocational factors (20 CFR 404.1520(d));

4. If an individual is capable of performing work he or she has done in the past, a finding of "not disabled" must be made (20 CFR 404.1520(e));

5. If an individual's impairment is so severe as to preclude the performance of past work, other factors including age, education, past work experience and residual functional capacity must be considered to determine if other work can be performed (20 CFR 404.1520(f)).

The rules set out in Appendix 2 of Subpart P of Regulations No. 4 are considered in determining whether a claimant with exertional impairments is or is not disabled. The regulations also provide that if an individual suffers from a nonexertional impairment as well as an exertional impairment, both are considered in determining residual functional capacity (20 CFR 404.1545). If a finding of disabled cannot be made based on strength limitations alone, the rules established in Appendix 2 are used as a framework in evaluating "disability." In cases where the individual has solely a nonexertional impairment, a determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2.

In applying the sequential steps outlined above, I conclude that a decision on whether the claimant is disabled cannot be made based on work activity or on medical facts alone. Moreover, the record establishes that the claimant cannot perform his past relevant work. However, considering the claimant's residual functional capacity and his age, education, and past work experience, I further conclude that there are other jobs which the claimant can perform and that such jobs exist in significant numbers in the national economy. Consequently, it must be found that the claimant is not disabled within the meaning of the Social Security Act.

The claimant is 51 years old and has a 4th grade education. He worked for Firestone as a plater repairman and a job setter. He is now retired from the company because they said that with the restrictions placed on him by the doctor, there were no jobs available to him. He said he cannot work now because of constant low back pain which radiates into his right leg causing him to drag it. He has been hospitalized on three occasions for traction and a myelogram and has also received therapy for his back as an outpatient. He becomes short of

breath on walking a block and is currently receiving shots for a calcium deposit in his right shoulder. He can only sit for 30 to 40 minutes at a time and mentioned that on a trip to Cincinnati, although he was not driving they had to stop eight times because he would get cramps in his legs. He gets up at 5:30 in the morning, because his back pains him, and takes a muscle relaxer; he spends the day sitting around or laying on the floor watching television; sometimes, he may do some work in his little garden or just sit outside and sleep.

The vocational expert who was present testified that his past work was semi-skilled and ranged from medium to heavy. He has transferable skills which include general mechanical ability, a knowledge of conveyor and plating lines and of hand tools. Assuming that he is limited to light work in a clean atmosphere, he said the claimant is qualified to do such unskilled work as nightwatchman, certain types of landscaping, stock work and visual final inspection. If he were limited to sedentary work in a clean atmosphere, he could do unskilled final inspection, packaging and bench assembly of small objects. He could transfer his skills to light machine set-up and repair if he did not need a clean atmosphere; he could also do machine set-up at a sedentary level under these conditions.

Mr. Quillen was hospitalized from December 30, 1981 to January 3, 1982 with back and left leg pain. A myelogram revealed a minimal extradural defect, he was treated with bedrest, conservative care and pelvic traction, responded "rather faborably" and was discharged (Exhibit 12). He had also been hospitalized in August 1980 and August 1981 for pelvic traction (Exhibits 13 and 14).

In addition, he was evaluated on November 4, 1981 by Dr. John W. Ziegler (Exhibit 15) with complaints of constant pain in the lumbosacral area extending down the left leg with more pain and weakness in the right knee. He walked with a limp favoring his right leg but stood normally and was able to

do heel, toe and tandem walking. All motions of the lumbar spine were limited. Rhomberg and Laseque were negative. The doctor concluded that he had nerve root irritation at L4/L5, left, chronic and he recommended a TENS.

November, 1982, Dr. Yurkanian, the treating physician, reported the claimant had a post-laminectomy syndrome with hypesthesia of the right calf and pain on straight leg raising, bilaterally (Exhibit 19).

Dr. A. N. Sinha, performed an orthopedic evaluation on September 20, 1982 (Exhibit 17). The claimant walked with a slight limp and range of motion of the lumbar spine was restricted. There was difficulty tiptoeing and squatting but he was able to get up on the examining table without trouble. Straight leg raising was painful at 30 degrees on the right and at 60 degrees on the left; there was no muscle atrophy in the legs. An x-ray of the right knee showed no evidence of degenerative arthritis and an x-ray of the lumbar spine appeared fairly normal. There were no neurological deficits to suggest any persistent nerve root involvement in the lower back.

With respect to his pulmonary problem, Dr. William Athens reported that he had known the claimant since April 15, 1980 at which time a chest x-ray was normal and pulmonary function tests revealed moderate obstructive lung disease. He was treated with antibiotics, bronchodilators and told not to smoke and to avoid air pollution. Since then he as been seen several times for exacerbations.

On July 25, 1983, Dr. S.E. Newman at request of counsel evaluated claimant. He reports claimant was 5'2½'' weighing 236 pounds with blood pressure of 136/86. Electromyographic examination showed increased resistance to needle insection in the L2 through S2 area. The anterior primary divisions demonstrated polyphasic activity at L5-S1. Claimant advised

he has had back problems over a ten year duration. Dr. Newman was of the opinion based upon history and clinical findings that claimant would be limited in lifting, stooping, turning, twisting, prolonged sitting, standing, walking and the like.

The claimant has not engaged in substantial gainful activity since April 27, 1982. He has a severe impairment but it does not meet or equal any listed in Appendix 1. I find his testimony of constant severe low back pain to be exaggerated. The clinical findings and his activity do not substantiate this degree of pain. The most recent x-ray was "fairly normal" and there were no neurological deficits. While I do not doubt that Mr. Quillen has some discomfort, it is not as severe as alleged. He was observed at the hearing to sit in a relaxed manner, leaned back in his chair and move his arms freely. He also has some degree of pulmonary dysfunction and the combination would limit him, in my opinion, to the performance of sedentary work. His past work was medium to heavy; therefore, he cannot return to this work. However, considering his age, which is defined as closely approaching advanced age, and his limited education, in combination with his semi-skilled work background and the fact that he has transferable skills, Rule 201.11, Table No. 1, Appendix 2, Subpart P, Regulations No. 4 is applicable. Since Regulation 404.1569 provides that when the findings of fact are the same as the rule, we use the rule to decide whether a person is disabled. The claimant must be found "not disabled".

FINDINGS

After careful consideration of the entire record, I make the following findings:

1. The claimant met the disability insured status requirements of the Act on April 27, 1982, the date the claimant stated he became unable to work, and continues to meet them December 31, 1985.

2. The claimant has not engaged in substantial gainful activity since April 27, 1982.

3. The medical evidence establishes that the claimant has severe post-laminectomy syndrome and chronic obstructive lung disease, but that he does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

4. The claimant's allegations as to the severity of his pain are exaggerated.

5. The claimant has the residual functional capacity to perform the physical exertion requirements of work except for lifting and carrying more than 10 pounds or engaging in prolonged walking or standing. There are no nonexertional limitations (20 CFR 404.1545).

6. The claimant is unable to perform his past relevant work as plater repairman and job setter.

7. The claimant has the residual functional capacity to perform the full range of sedentary work (20 CFR 404.1567).

8. The claimant is 51 years old, which is defined as closely approaching advanced age (20 CFR 404.1563).

9. The claimant has a limited education (20 CFR 404.1564).

10. The claimant has acquired work skills, such as general mechanical ability, knowledge of conveyor and plaint lines and use of hand tools which he demonstrated in past work. Considering his residual functional capacity, these skills can be applied to meet the requirements of semi-skilled work activities of other work which exists in significant numbers in the national economy (20 CFR 404.1568). Examples of such jobs are machine set-up.

11. Section 404.1569 of Regulations No. 4 and Rule 201.11, Table No. 1 of Appendix 2, Subpart P, Regulations No. 4, direct a conclusion that, considering the claimant's residual functional capacity, age, education, and work experience, he is not disabled.

12. The claimant was not under a "disability," as defined in the Social Security Act, at any time through the date of this decision (20 CFR 404.1520(f)).

DECISION

It is my decision that, based on the application filed on August 6, 1982, the claimant is not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.

/s/ ALFRED J. MORAD

Alfred J. Morad
Administrative Law Judge

Dated: September 27, 1983